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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,115	10/17/2003	Xin-Xing Gu	NIH218.001C1	9242

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EXAMINER

Zeman, Robert A

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/688,115

Applicant(s)

GU, XIN-XING

Examiner

Robert A. Zeman

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-23 is/are rejected.
- 7) ☒ Claim(s) 3-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-15-05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I in the reply filed on 3-11-2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claim 2 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claims 1-23 are pending. Claims 1 and 3-23 are currently under examination.

### ***Priority***

The elected claims are drawn to aerosolizers. Since the priority document PCT/US01/32331 does not appear to disclose the instant invention, the filing date of the instant application (10-17-2003) will be used as the priority date with regard to the application of prior art.

### ***Information Disclosure Statement***

The Information Disclosure Statement filed on 7-15-2004 is acknowledged. An initialed copy is attached hereto.

### ***Drawings***

The drawings filed on 10-17-2003 are objected to. The quality of Figures 3 and 7 prevents one from discerning what is being presented.

### ***Claim Objections***

Claims 3-23 are objected to because of the following informalities: the recited claim language encompasses non-elected inventions. Appropriate correction is required.

Claims 3-23 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The instant claims are drawn to aerosolizers. The recitation of the term “for intranasal administration of an immunogenic composition comprising...” is deemed an intended use and hence is not limiting. Moreover, since the dependent claims fail to recite any features of the claimed aerosolizer they fail to further limit the parent claim.

Claims 3-23 are objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The instant claims are drawn to aerosolizers. The recitation of the term “for intranasal administration of an immunogenic composition comprising...” is deemed an intended use and hence is not limiting. Consequently, the recitation of the components of the recited “immunogenic composition” is not limiting.

Claims 1 and 3-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Century (U.S. Patent 6,041,775).

Century discloses an aerosolizer (see abstract). Since the instant claims recite no features of the claimed aerosolizer, Century anticipates the instant claims.

Claims 1 and 3-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Barditch et al. (U.S. Statutory Invention Registration H257).

Barditch et al. disclose a dry powder aerosolizer (see abstract). Since the instant claims recite no features of the claimed aerosolizer, Barditch et al. anticipate the instant claims.

Claims 1 and 3-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Century (U.S. Patent 6,029,657).

Century discloses an aerosolizer (see abstract). Since the instant claims recite no features of the claimed aerosolizer, Century anticipates the instant claims.

***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (571) 272-0866. The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert A. Zeman  
May 25, 2005